IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 22.02.2005

Coram

The Honourable Mr.Justice M.CHOCKALINGAM

Crl.OP.No. 32871 of 2004
and
CRL.M.P.NO.10462 OF 2004 AND 544 OF 2005

1.S.Subramanian @ Senthil
2.S.Sambandam
3.S.Bakialakshmi
4.S.Rajaram ...Petitioners/ Accused

-vs-

State rep. by
the Inspector of Police
All Women Police Station,
Ranipet. ...Respondent / Complainant

Petition filed under section 482 of Cr.P.C. for the relief as stated therein.

For Petitioners : Mr.K.S.Dinakaran

For Respondent : Mr. K.Doraisamy
Public Prosecutor
assisted by Mr.V.Arul
Government Advocate(Crl.Side)

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ORDER

The petitioners have filed the above Criminal Original petition praying to call for the records in C.C.No.206 of 2004 on the file of the Judicial Magistrate No.II, Walajapet and quash the order of taking cognizance dated 5.8.2004 and consequent issuance of summons to the petitioners and to allow this Criminal Original Petition.

2.Heard the learned counsel for the petitioners as well as the learned Public Prosecutor.

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3.This criminal Original petition has been brought forth by the petitioners four in number, who are facing the proceedings before the Court of Judicial Magistrate II, Walajapet in C.C.No.206 of 2004 which was taken cognizance by the said Court on 5.8.2004, on a charge sheet filed by the respondent police under Sections 498A, 294B, 342, 506(I) IPC and Section 4 of Dowry Prohibition Act as against the first petitioner and under Sections 498A,342 read with 34,114 read with 4 of Dowry Prohibition Act as against the other petitioners/accused 2 to 4.

4. Originally, a complaint was lodged by the de-facto complainant before the respondent police, and since no action was taken by them, a private complaint was lodged before the concerned Magistrate, and the learned Magistrate forwarded the said complaint under Section 156(3) Cr.P.C. to the respondent police. Pursuant to the same, a case came to be registered by the respondent police in Crime No.6 of 2004 for the offences punishable under Sections 498(A), 344, 294(B), 506(2)IPC and under Section 4 of Dowry Prohibition Act against the four accused.

5.Admittedly, the marriage between the de-facto complainant and the first petitioner took place on 5.11.2003, and they were living together for a short while. Following the same, a complaint was lodged before the concerned Court on 9.3.2004, as a result of which, a case came to be registered in Crime No.6 of 2004 by All Women Police Station, Ranipet. Investigation was taken up by the respondent police, and charge sheet was also laid in C.C.No.206 of 2004 under Sections 498(A) IPC, 4 of Dowry Prohibition Act, 343,294(b), 506(i) IPC read with 34/1145 IPC, and now it is under challenge in this Criminal Original Petition.

6. Petitioners, originally filed a Criminal Revision Case in Crl.R.C.No.1650 of 2004 challenging the impugned order of the lower Court taking cognizance of the case. Subsequently it was withdrawn since it is not maintainable. Now the petitioners have brought forth this petition to quash the proceedings before the lower court.

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7.Learned counsel appearing for the petitioners inter-alia would submit that the marriage between the first petitioner and the de-facto complainant took place on 5.11.2003. But the marriage was never consummated. Since the first petitioner found that there was a lack of cooperation from the spouse and the marriage did not fructify in the true sense, he approached the family Court for nullity of marriage under Section 12(1)(a) and

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(c) of the Hindu Marriage Act. On service of summons on 1.2.2004, from the Family Court, as a counter-blast, the de-facto complainant lodged the instant complaint on 9.2.2004 with all false, frivolous and vexatious allegations, as if there was a demand of dowry, wrongful confinement, abuse of filthy language etc. After registration of the case, the police agency have not taken up the investigation in a fair manner, but with lopsided and it was done in the interest of the de-facto complainant. Before the lower Court, an application was filed stating that the investigation was not properly done and that the first petitioner was only interrogated and not others and though the documents were handed over to the police agency at the time of investigation, they were not produced along with the case papers before the lower Court. But,there was a denial on the part of the Inspector of Police, in his affidavit as to the receipt of the said documents and that they are not in their custody. Added further, learned counsel for the petitioner relying on Rule 566 of Police Standing Orders that the investigating officer should carry on the investigation in an impartial manner and this particular Standing Orders give warning to the Investigating officer who is entrusted with the investigation and as to the facts, a duty is cast upon the police officer to find out the truth, and to achieve the purpose, it is necessary to preserve an open mind throughout the inquiry. But in the instant case, it was not done so.

8.The first petitioner herein was residing in Saligramam with other members of the family where he was given police personnel for his security purposes. The illegal confinement, dowry harassment, etc have taken place, according to the complainant, at the house of the second respondent at Saligramam. No one of the police personnel attached was examined by the investigating officer. It is needless to state that the Police personnel attached to the security office, have to be examined to come out with the truth that no occurrence has been taken place in the residence of the second petitioner. The last contention put forth by the learned counsel for the petitioner is that the investigation was done by the inspector of police attached to the Women Police Station. But it should have been done only by the Deputy Superintendent of Police. He also took the Court to the Tamil Nadu Dowry Prohibition Rules, 2004 (hereinafter referred to as 'the Rules') wherein the police officer is defined as "Deputy Superintendent of Police" of the Division concerned. Thus, the investigation should have been done in the sense that after registering the case, under the Rule, the investigation should have been taken by the Deputy Superintendent of Police and that a case has to be registered in the light of the said Rules. Thus, the investigation of the case should have been taken by the Deputy Superintendent of Police who is defined as Police officer in the said Rules and in the

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instant case, it has affected the entire investigation. Under the circumstances, the case before the lower court has got to be quashed.

9.Contrary to the above contentions, learned Public prosecutor appearing for the State would submit that it is true that the Tamil Nadu Dowry Prohibition Rules, 2004 defines the police officer as Deputy Superintendent of Police of the Division concerned. But, nowhere it prohibits any officer in the rank of Inspector of Police to conduct the investigation and it is only a subordinate legislation and it cannot over ride what is found in the Act . Learned Public Prosecutor would further add that it has been clearly mentioned in 5(xviii)of the said rules that the marriages performed within his jurisdiction are likely to be visited by him or his staff along with the police officers . Therefore, for this action, the visit becomes necessary. The rule would not contemplate that the investigation should be done by the Deputy Superintendent of Police and not by any one in the rank of Inspector of Police for the purpose of investigation and in so far as the other contentions are concerned, he would state that the factual positions as submitted by the learned counsel for the petitioners shall be put forth before the lower Court by adducing evidence and not by invoking the jurisdiction of this Court under Section 482 Cr.P.C. and hence this criminal Original petition has got to be dismissed.

10.After careful consideration of the rival submissions, this Court is of the considered opinion that the Criminal Original Petition has no merit. Admittedly, a complaint was lodged by the de-facto complainant before the concerned Magistrate Court and the same was forwarded to the concerned police under Section 156(3) Cr.P.C. and a case came to be registered, investigation was done and now the charge sheet was filed and taken cognizance by the lower Court in C.C.No.206 of 2004.

11. The contentions now put forth by the learned counsel for the petitioners is that the investigation was not done in a free mind, but lopsided and the rules of the Police Standing orders have not been strictly followed. This could be gone into only at the time of trial and not at this stage by filing a quash petition under Section 482 Cr.P.C. An opportunity has to be given for the defence to put forward all the questions at the time of cross examination of the concerned officer. Apart from that, it is the duty of the prosecution to show that fair investigation was conducted and it has got to be appreciated by the Court concerned only at the time of trial, and the matter has got to be disposed of by the trial Court on appreciation of evidence, on merits and in accordance with law. This Court at this juncture cannot go into or investigate into whether the

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investigation was done with an open mind or otherwise. The further contention of the learned counsel for the petitioners that the investigation should have been done only by the Deputy Superintendent of Police who is defined as police officer under the Rules and not by the Inspector of Police, cannot be countenanced. The Rule is a subordinate legislation and the provisions under the Criminal Procedure Code give full power on the Inspector of Police to proceed with the matter and apart from that, the definition for Police officer would clearly reveal as submitted by the learned Public Prosecutor that nowhere there is a prohibition that below the rank of Deputy Superintendent of Police shall not exercise the power to investigate the case and hence the contention of the learned counsel for the petitioners in this regard cannot be countenanced. However, there cannot be any impediment to raise all the contentions put forth by the learned counsel for the petitioners before this Court and recorded above, at the time of examination of witnesses and also adducing evidence before the lower Court. It can be well stated that there is no impediment in law for the petitioners to avail the opportunity before the lower Court by filing an application for discharge. The above contentions also have to be gone in to only by the lower Court at the time of disposal of the application for discharge and not by way of 482 Cr.P.C. like this.

12.It is brought to the notice of the Court that the second petitioner is a retired District Judge and presently a Member of State Human Rights Commission and the fourth petitioner is a practising advocate. Hence, the personal appearance of 2nd and 4th petitioners before the lower court is dispensed with, except on the dates necessary in the opinion of the lower Court.

13.With this observation, the Criminal Original Petition is dismissed. Consequently, Crl.M.P.No.10462 of 2004 and 544 of 2005 are also dismissed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1.Judicial Magistrate II,
Walajapet.

2. do- thro The Chief Judicial Magistrate, Vellore.

3.Inspector of Police
All Women Police Station,
Ranipet.

4. The Public Prosecutor,
Madras.

2 ccs to Mr. K.S. Dinakaran, Advocate, SR. 8370
1 cc to The Public Prosecutor, SR. 8675

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JRG (CO)
kk 25.2.05

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